

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SHARON E. MESSENGER,

Plaintiff,

v.

CONDOLEEZA RICE, Secretary of
State for the United States of
America

Defendant.

NO. CV-05-0053-EFS

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS AND
DISMISSING PLAINTIFF'S
PETITION FOR DECLARATION OF
UNITED STATES NATIONALITY
FOR LACK OF SUBJECT MATTER
JURISDICTION**

Before the Court, without oral argument, is Defendant Condoleezza Rice's (the "Government's") Motion to Dismiss. (Ct. Rec. 9.) Assistant United States Attorney Pamela DeRusha appears on brief for the Government and Julian St. Marie for Plaintiff Sharon Messenger. This case arises from Ms. Messenger's filing of her Petition for Declaration of United States Nationality ("Petition"), in which she asks the Court to revoke the Certificate of Loss of Nationality ("CLN") approved by the Department of State on November 11, 1977, and declare her to be a United States national. (Ct. Rec. 1.)

On July 29, 2005, the Government filed a Motion to Dismiss asking the Court to dismiss Ms. Messenger's Petition for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted. (Ct. Rec. 9.) October 20, 2005, after initially considering the

1 Government's Motion to Dismiss and the pleadings filed in connection
2 therewith, the Court ordered the parties to file supplemental memoranda
3 in support of their respective positions concerning several issues
4 relevant to the Government's motion. (Ct. Rec. 20.) The parties
5 supplemental memoranda were filed with the Court in early November 2005.
6 (Ct. Recs. 21 & 25.)

7 On January 31, 2006, after reviewing the parties' original and
8 supplemental pleadings, the Court issued an Order Denying in Part and
9 Holding in Abeyance in Part Defendant's Motion to Dismiss. (Ct. Rec. 29.)
10 In that Order, the Court denied the Government's argument that the
11 issuance of the 1977 CLN triggered Ms. Messenger's five-year statute of
12 limitations to bring the instant suit under 8 U.S.C. § 1503(a). *Id.* Also
13 in that Order, the Court expressed its concern that subject-matter
14 jurisdiction may be lacking and ordered the parties to file a second
15 round of supplemental briefing on several issues relating to whether §
16 1503(a)'s jurisdictional requirements have been met. *Id.* The parties'
17 filed their second supplemental memoranda with the Court on February 21,
18 2006. (Ct. Recs. 31 & 32.)

19 After reviewing the second set of supplemental memoranda, all other
20 materials submitted in this case, and the relevant authority, the Court
21 is fully informed and hereby dismisses Ms. Messenger's Petition for lack
22 of subject matter jurisdiction.

23 I. Background

24 Petitioner Sharon Messenger was born in Mexico on April 19, 1957.
25 (Ct. Rec. 1 at 2.) Ms. Messenger's father, William Phillip Messenger,
26 was a United States citizen, while her mother, Florence Doreen Messenger,

1 was a Canadian citizen. *Id.* Ms. Messenger lived with her parents in
2 Mexico for most of her childhood. *Id.* In April 1975, Ms. Messenger, then
3 eighteen years old, began attending classes at a university in Monterrey,
4 Mexico. *Id.* at 3. During her first semester, Ms. Messenger was notified
5 by the Mexican government that if she did not pledge allegiance to
6 Mexico, she could not continue attending the Monterrey university at the
7 reduced Mexican national rate she was then paying. *Id.* As a result, on
8 March 3, 1976, Ms. Messenger completed an application for a Certificate
9 of Mexican Nationality and took an oath of allegiance to Mexico. *Id.*
10 Thereafter, on June 4, 1976, Ms. Messenger received a Certificate of
11 Mexican Nationality. *Id.*

12 On August 19, 1977, while attempting to obtain a United States
13 tourist visa, Ms. Messenger signed an Affidavit of Expatriated Person,
14 in which she certified she had taken an oath of allegiance to Mexico and
15 had received a Certificate of Mexican Nationality. (Ct. Recs. 1 at 3 &
16 10-2 at 18-19.) Unbeknownst to Ms. Messenger, the Affidavit of
17 Expatriated Person contained language stating that the above-described
18 acts had been "done with the intention of relinquishing [her] United
19 States citizenship." (Ct. Recs. 1 at 3-4 & Ct. Rec. 10-2 at 18.) On
20 November 11, 1977, the United States Department of State issued Ms.
21 Messenger a CLN, which indicated Ms. Messenger had expatriated herself
22 from the United States on June 4, 1976. (Ct. Recs. 1 at 4 & 10-2 at 14-
23 15.) The CLN also included language explaining the appeal procedures
24 Ms. Messenger could employ to challenge the CLN. (Ct. Rec. 10-2 at 15.)

25 In 1990, Ms. Messenger asked the United States Department of State
26 to reconsider its issuance of the 1977 CLN. This request was met by a

1 June 8, 1991, letter from an American Vice Consul, in which Ms. Messenger
2 was informed the Department of State had upheld its issuance of the CLN.
3 (Ct. Rec. 21-2.) Then in 2000, Ms. Messenger again asked the Department
4 of State to reconsider the 1977 CLN decision. This request was also
5 denied by the Department of State in an April 9, 2001, letter that
6 stated: "Unless you can demonstrate by substantial and contemporaneous
7 evidence that your intent was other than that stated in the [Affidavit
8 of Expatriated Person], the Department has no adequate legal grounds to
9 overturn the Certificate of Loss of Nationality." (Ct. Rec. 1 at 15.)

10 Finally, on February 7, 2005, following yet another request for
11 reconsideration by Ms. Messenger, the Department of State again upheld
12 its issuance of the 1977 CLN, stating that unless Ms. Messenger "can
13 provide new evidence to support another review, [it would] decline future
14 requests." (Ct. Rec. 14.) As a result, Ms. Messenger petitioned the
15 Court on February 12, 2005, seeking an order revoking the 1977 CLN and
16 declaring Ms. Messenger a United States citizen by virtue of her father's
17 United States citizenship at the time of her birth. (Ct. Rec. 1.)

18 **II. Analysis**

19 Section 1503(a) of United States Code Title 8 provides:

20 If any person who is within the United States claims a right
21 or privilege as a national of the United States and is denied
22 such right or privilege by any department . . . upon the ground
23 that he is not a national of the United States . . . such
person may institute an action . . . against the head of such
department . . . for a judgment declaring him to be a national
of the United States.

24 However, such actions must "be instituted [] within five years after the
25 final administrative denial of such right or privilege. . . ." 8 U.S.C.
26 § 1503(a). Thus, this Court has subject matter jurisdiction over the
instant action only if (1) Ms. Messenger claimed a right or privilege as

1 a national of the United States, (2) such right or privilege was denied
2 by a department on the ground Ms. Messenger was a national of the United
3 States, (3) a court action was brought against the head of the department
4 that had denied Ms. Messenger's claimed right or privilege, and (4) the
5 action was commenced within five years of the final administrative denial
6 of such right or privilege.

7 In support of her belief the Court has subject matter jurisdiction
8 to consider the instant action, Ms. Messenger argues that the Department
9 of State's refusal in 2005 to revoke its issuance of the CLN constituted
10 a final administrative denial of a right or privilege of United States
11 nationality and that her claim is timely because it was filed within five
12 years of the alleged 2005 final administrative denial. In contrast,
13 without taking a firm position of whether Ms. Messenger has ever been
14 denied a right or privilege of United States nationality, the Government
15 asserts that subject matter jurisdiction does not exist because no event
16 involving Ms. Messenger constitutes a final administrative denial of a
17 right or privilege of United States nationality. Therefore, according
18 to the Government, because the fourth jurisdictional requirement has not
19 been satisfied, this case must be dismissed for lack of subject matter
20 jurisdiction. In making this argument, the Government focuses on the
21 discretionary nature of the Department of State's right to vacate CLNs
22 under 22 C.F.R. § 7.2 and how it may repeatedly review its CLN decisions
23 whenever and as frequently as it likes. Thus, the Government argues that
24 because its CLN decisions may be repeatedly reviewed by the Department
25 of State, there is no basis for concluding a refusal to revoke a CLN is
26 a *final* denial, let alone a *final administrative denial*. The Court
recognizes the merit of this argument. However, because, as explained

1 below, the Court concludes that a refusal to revoke a CLN does not
2 constitute a *denial* of right or privilege under § 1503(a), the Court need
3 not decide whether such refusals constitute *final administrative denials*
4 under § 1503(a).

5 In this case, the only occurrences that could be construed as a
6 denial of a right or privilege of United States nationality are the
7 Department of State's 1977 issuance of Ms. Messenger's CLN and the 1991,
8 2001, and 2002, Department of State refusals to revoke the 1977 CLN.
9 Because the Court has already determined the 1977 CLN issuance does not
10 constitute a denial of a right or privilege of United States nationality
11 under § 1503(a) (see Ct. Rec. 29), the Court need now only consider
12 whether one or more of the three above-mentioned refusals constitutes
13 such a denial under § 1503(a).

14 The Court's consideration of whether any of the three refusals
15 constitute a § 1503(a) denial begins with the observation that no
16 evidence in the record supports a finding that any of the refusals have
17 prevented or limited Ms. Messenger from going anywhere or doing anything
18 in the United States. Furthermore, nothing in the record indicates that
19 since the refusals were made, that Ms. Messenger has been denied any
20 public benefit or privilege reserved to United States nationals. Next,
21 the Court observes that nothing contained in any of the refusals
22 expressly or impliedly indicates Ms. Messenger was being restricted in
23 any way. Instead, the refusals, like the 1977 CLN, simply appear to be
24 the Department of State's opinion of whether Ms. Messenger expatriated
25 herself and should not be confused as declarations of nationality or of
26 what rights Ms. Messenger is or is not entitled to enjoy. (Ct. Recs. 21-
2, 10-2 at 13, & 14.) As is evident from Congress' enactment of §
ORDER ~ 6

1 1503(a), determinations regarding nationality and the rights stemming
2 therefrom are reserved to the courts.

3 In general, the Court believes a *denial* of a right or privilege of
4 United States nationality requires an affirmative act that attempts to
5 prevent or restrict a person from enjoying some right or privilege
6 guaranteed to United States nationals. Examples of such acts include the
7 denial of a passport, a social security card, and the right to vote. As
8 noted above, the record contains no evidence that the Department of
9 State, through its refusals to revoke the 1977 CLN, prevented or
10 attempted to prevent Ms. Messenger from enjoying any right or privilege
11 guaranteed to United States nationals. For this reason, the Court
12 concludes none of the three refusals constitute a denial under § 1503(a).
13 Therefore, because the denial of a right or privilege of United States
14 nationality is a prerequisite to any § 1503(a) suit and each of the
15 events relied upon by Ms. Messenger as her requisite denial have been
16 found to not constitute a denial of a right or privilege of United States
17 nationality under § 1503(a), the Court concludes it lacks subject matter
18 jurisdiction and hereby dismisses Ms. Messenger's case.

19 The Court expresses no opinion on the potential right of Ms.
20 Messenger - should she be denied a right or privilege of United States
21 nationality - to file a new case under § 1503(a) after complying with its
22 requirements.

23 Accordingly, **IT IS HEREBY ORDERED:** The remainder of Defendant's
24 Motion to Dismiss (**Ct. Rec. 9**) is **GRANTED**. Plaintiff's Petition for
25 Declaration of United States Nationality (**Ct. Rec. 1**) is **DISMISSED** for
26 lack of subject matter jurisdiction.

IT IS SO ORDERED. The District Court Executive is directed to:
ORDER ~ 7

1 (A) Enter this Order;

2 (B) Enter judgment in favor of the Government;

3 (C) Provide copies of the Judgment to counsel; and

4 (D) Close this file.

5 **IT IS SO ORDERED.** The District Court Executive is directed to enter
6 this Order and provide a copy to counsel.

7 **DATED** this 31st day of March, 2006.

8
9 s/ Edward F. Shea
EDWARD F. SHEA
10 United States District Judge

11 Q:\Civil\2005\0053.dismiss.petition.subject.matter.jd.frm
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26